THE HON'BLE SRI JUSTICE V.ESWARAIAH
and
THE HON'BLE SRI JUSTICE V. SURI APPA RAO

CRIMINAL APPEAL No.1080 of 2007

Judgment: (Per VSARJ)

This criminal appeal is filed under Section 374(2) Cr.P.C against the judgment dated 23.07.2007 passed by the learned IV Additional Sessions Judge, Kurnool in S.C.No.110 of 2006, whereby the appellant/accused was found guilty of the offences under Sections 302 and 379 I.P.C., convicted therefor and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for six months for the offence punishable under Section 302 I.P.C. The accused was further sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for four months for the offence under Section 379 I.P.C.

The brief facts that are necessary for the disposal of this case are as follows:

The marriage of Sujatha (hereinafter referred to as 'the deceased') was performed with the accused in the month of May, 2004. At the time of marriage, the parents of the deceased gave an amount of Rs.50,000/- cash and five tolas of gold to the accused. The accused addicted to bad vices like playing cards and committing petty thefts. He was not attending the agriculture work and was spending money without doing any work. The accused used to ask the deceased to give money, but the deceased used to refuse the same. Hence, the accused planned to kill the deceased and waited for an opportunity. While so, on 16.12.2005, the accused and the deceased went to their fields to attend agriculture operations. At lunch hour, both had meals

and the accused sent the deceased to their 'Yerranela fields'. The deceased went there and slept under a tree. Later, the accused also went there and found the deceased sleeping under the tree. Then, he woke up the deceased, took her to their castor crop field and asked her to give gold ring and leg chains. When the deceased refused to give them, the accused took the saree of the deceased, strangulated and murdered her. Thereafter, he committed theft of gold and silver ornaments from the body of the deceased, hide the same in dung pit and he alone returned the house at 4.30 p.m. On enquiry, the accused informed his parents that the deceased left the fields at 12.30 p.m. Then the parents of the accused and some others went to 'Yerranela fields', where they found the dead body of the deceased. They noticed missing of gold and silver articles from the body of the deceased and also noticed injuries over the neck of the deceased. Immediately, P.W.1, who is the father of the accused and father-in-law of the deceased, gave complaint to the Police of Kodumur Police Station. Based on the said complaint, P.W.16-Sub Inspector of Police registered a case in Crime No.96 of 2005 under Sections 302 and 379 I.P.C. P.W.17-Inspector of Police, Kodumur Police Station took up investigation. On 17.12.2005, he visited the scene of offence, seized broken bangles, plastic basket along with turkey towel, steel water can, steel utencils and chappals in the presence of mediators-P.Ws.8 and 9. On the same day, he conducted inquest over the dead boyd of the deceased in the presence of P.Ws.1, 3 and others. Subsequently, on 20.12.2005 he arrested the accused and recorded his confession statement in the presence of P.Ws.11 and 14 under the cover of panchanama. P.W.15- Professor of Medical College, Kurnool, who conducted postmortem examination over the dead body of the deceased deposed that he issued Ex.P.18 postmortem certificate

opining that the deceased died due to asphyxia due to pressure over the neck and that the death was occurred about 24 hours prior to postmortem examination. After completion of investigation, P.W.17 filed charge sheet.

After hearing the learned Additional Public Prosecutor and the learned defence counsel, the learned Sessions Judge framed charges under Sections 302 and 379 I.P.C against the accused. When the said charges were read over and explained to the accused, he denied the same and pleaded not guilty.

In order to prove the case of the prosecution, the prosecution examined P.Ws.1 to 17 and got marked Exs.P.1 to P.22 apart from M.Os.1 to 16. On behalf of the accused, no oral or documentary evidence was adduced.

The prosecution, in order to prove that the deceased met with homicidal death, examined P.Ws.10, 13, 15 and 17 and relied upon Ex.P.7-inquest report and Ex.P.18-post mortem certificate.

P.W.10-K.Madhusudhana Reddy, who is a native of Kodumur stated in his evidence that on 17.12.2005 at about 12.00 noon, when he was going to house from his field, on the way in the fields of P.W.1, he noticed large number of public and police and on seeing them, he went there and found the dead body of the deceased lying on the ground. He also stated that the Inspector of Police conducted inquest over the dead body of the deceased and that he also signed in Ex.P.7-inquest panchanama.

P.W.13-K.Seelappa, who is the Mandal Revenue Inspector of Kodumur Village stated in his evidence that on 17.12.2005 the police called him to the fields of P.W.1 and conducted inquest over the dead body of the deceased in his presence; that during the inquest, the police enquired the witnesses; that he found black mark on the neck of

the deceased and that he signed on Ex.P.7-inquest report.

P.W.15, Professor of Forensic Medicine, Sidhartha Medical College, Kurnool stated in his evidence that on 17.12.2005 on requisition from the Station House Officer, Kodumur he conducted post mortem examination over the dead body of the deceased and found the following antemortem injuries over the dead body of the deceased.

(1) A contusion abrasion present on the front of neck measuring 24x4 cms. It is present on front and sides of the neck sparing on the back of, peeling of skin here and there.

(2) A contusion of brownish and red in colour. Internally, on opening the neck, echenmosys of the neck muscle with fracture of thyroid cortlege.

He issued Ex.P.18 postmortem certificate opining that the deceased died due to asphyxia due to pressure over the neck.

P.W.17, who is the Inspector of Police stated in his evidence that on 16.12.2005 at 20.15 hours he was informed about the murder of the deceased. Then he immediately took up investigation, observed the scene of offence, conducted inquest over the dead body of the deceased in the presence of the relatives of the deceased and prepared Ex.P.7-inuqest report.

Thus, by the evidence of P.Ws.10, 13, 15 and 17, the prosecution could able to prove that the death of the deceased was homicidal due to asphyxia due to pressure over the neck.

The next point for consideration is whether the accused is responsible for the death of the deceased, who is none other than his wife.

It is the case of the prosecution that the accused was addicted to bad vices and used to ask the deceased to give money for his vices. When the deceased refused to give money, the accused planned to kill

her. In pursuance of his plan, the accused took the deceased to the fields and after attending the agricultural operations, the accused sent the deceased to 'Yerranela Field', where the deceased slept under a tree. Then the accused went there, woke up her, took her to another field and asked her to give gold ornaments and silver ornaments. When the deceased refused to given them, the accused took the saree of the deceased and strangulated her to death. Admittedly, there are no eyewitnesses to the incident. The prosecution solely relied upon the circumstantial evidence and dog squad operation to connect the accused with the crime.

P.W.1, who is the father-in-law of the deceased and who gave Ex.P.1-compalint, stated in his evidence that his wife and the deceased went to their fields in the morning hours for bringing fire wood; that in the afternoon his wife alone returned to home; that on enquiry, his wife informed him that the deceased went to other fields for collecting 'pundukura'; that the deceased did not return home even in the evening and that in the evening, himself and his neighbours went to their fields in search of the deceased and found the dead body of the deceased in their 'Yerranela field'.

P.W.2, who is the mother-in-law of the deceased also corroborated the evidence of P.W.1. She stated that on the date of incident, herself and the deceased went to the fields for collecting fire wood; that after having lunch, she returned to home, as she had some house hold work; that her daughter-in-law stayed at the fields and that as the deceased did not return home till the evening, herself and P.W 1 went to their fields and found the dead body of the deceased.

P.W.3, who is the father of the deceased, stated in his evidence that his daughter died about one year two months back; that after the marriage, he came to know that the accused was not doing agriculture

and he was habituated to bad vices; that on 16.12.2005 one Basi Reddy of their village informed him about the death of his daughter; that immediately himself, his wife, close relatives and villages went to Kodumur and found the dead body of the deceased in the fields of the accused; that he noticed hanging marks around the neck of the deceased and that they also noticed missing of gold and silver ornaments on the body of the deceased.

P.W.4, who is the mother of the deceased stated in her evidence that after receiving information about the death of her daughter, they went to Kodumur and found the dead body of the deceased and that they found black mark around the neck of the deceased and also found missing of gold and silver ornaments on the body of the deceased.

In order to prove that the deceased was last scene in the company of the accused, the prosecution examined P.Ws.5
and 6.

P.W.5, who is relative of the accused, has stated in his evidence that about 10 days prior to the death of the deceased, she saw the deceased at her house and that after coming to know about the death of the deceased, herself and her husband went to the fields of her brother-in-law and found the dead body of the deceased. However, she stated that she does not know the cause of death and who is responsible for the death of the deceased.

P.W.6, who is a resident of Kodumur, stated in her evidence that she had scene the deceased three months prior to her death; that she heard through the villagers during the relevant period that the accused was staying at Hyderabad and that she came to know about the death of the deceased through her relatives.

P.Ws.5 and 6 did not support the case of the prosecution with regard to the deceased in the company of the accused on the date of

her death and turned hostile.

The prosecution also examined P.W.11-K.Murali, who is Talari of Kodumur Village, to prove that the gold and silver articles stolen from the body of the deceased were recovered from the possession of the accused. He did not support the case of the prosecution, except stating that the police obtained his signature on Ex.P.11-arrest-cum-confession panchanama dated 20.12.205 and that the police did not inform him as to why they are taking his signature. He denied the suggestion that he narrated the police on 20.12.2005 at about 3.00 p.m, followed the police to Vallellamma temple and found the accused standing in front of the temple and that the police arrested the accused. He further denied the suggestion that the accused confessed to him that he committed the offence and based on his confession M.Os.4 to 6 gold ornaments were seized from the accsued.

The prosecution, thus, failed to prove the seizure of M.Os.4 to 6 from the possession of the accused to connect the accused with the crime.

The prosecution further examined P.Ws.7 and 8, AR Constable and Constable respectively of C.I.D., Dog Squad. Their evidence shows that on the instructions of S.I of Police, Kodumur, they went to the Police Station, Kodumur, and from there to the scene of offence along with the dog squad. They observed the scene of offence and noticed the dead body of the deceased. They took the dog to the dead body of the deceased and allowed it to smell and after smelling the neck portion of the dead body of the deceased the dog went to Kota street by smelling the road. The dog searched here and there for some time by smelling and went inside a house and then searched the entire house by smelling for some time and stopped. After five minutes, the dog came out and stopped on the road in front of the house and did not

proceed further. Therefore, they suspected that the culprit might have visited the house from the scene of offence after committing the offence and might have went away from the house on a vehicle. Later, they came to know that the said house belongs to the accused.

In **Gade Lakshmi Mangraju @ Ramesh vs State Of Andhra Pradesh**[1] the Supreme Court held as under:

> "The evidence based on sniffer dogs has inherent frailties. The possibility of error on the part of the dog or its master is the first among them. The possibility of misunderstanding between the dog and its master is close to its heels. The possibility of a misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out. The last, but not the least, is the fact that from a scientific point of view, there is little knowledge and much uncertainty as to the precise faculties which enable police dogs to track and identify criminals. Police dogs engaged in these actions by virtue of instincts and also by the training imparted to them. Criminal Courts need not therefore bother much about the evidence based on sniffer dogs. Investigating exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them."

In the circumstances, in the instant case, except the evidence of P.Ws.7 and 8, who took the dog squad to the scene of offence, there is absolutely no other evidence to connect the accused with the offence. Further, the charge sheet filed by the Investigation Officer is silent about the engaging of dog squad for detection of the crime and no panchanama was conducted about the proceedings of the dog squad detection. Admittedly, there is no evidentiary value for the dog squad detection unless the said detection is corroborated by any independent evidence.

The prosecution failed to prove any of the circumstances to

connect the accused with the crime and there is absolutely no evidence that the accused is responsible for causing the death of the deceased. Therefore, the conviction and sentence imposed against the accused is liable to be set aside.

Accordingly, the conviction and sentence recorded against the appellant/accused for the offence punishable under Sections 302 and 379 IPC in Sessions Case No.110 of 2006, dated 07.08.2007 by the IV Additional Sessions Judge, Kurnool are set aside. The accused shall be set at liberty forthwith, if he is not required in any other case. Fine amount if paid shall be refunded to him.

In the result, the Criminal Appeal is allowed.

V.ESWARAIAH, J

V. SURI APPA RAO, J

Date: 15.04.2011
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[1] AIR 2001 SC 2677